

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAMARR ROWELL,
 #61987

Plaintiff,

vs.

R. BARRY, *et al.*,

Defendants.

3:11-cv-00021-ECR-VPC

ORDER

Plaintiff is a prisoner proceeding *pro se* and has submitted a complaint (docket #1-1) attempting to initiate a civil rights action pursuant to 42 U.S.C. § 1983, along with an application to proceed *in forma pauperis*. However, on at least three (3) occasions, the court has dismissed civil actions commenced by plaintiff while in detention for failure to state a claim upon which relief may be granted.

Under 28 U.S.C. § 1915(g), “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that is frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not proceed *in forma pauperis* and instead must pay the full \$350.00 filing fee in advance, unless he is under imminent danger of serious physical injury. “Section 1915(g)’s cap on prior

1 dismissed claims applies to claims dismissed both before and after the statute's effective date" of April
2 26, 1996. *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

3 Plaintiff cannot proceed *in forma pauperis* in this action or any other civil action filed
4 in any federal court because he has had three (3) or more prior actions dismissed for failure to state a
5 claim upon which relief may be granted, or as frivolous or malicious. Plaintiff has not alleged, and the
6 subject matter of this action does not indicate, that he is in imminent danger of serious physical injury.
7 He must pre-pay the filing fee in full.

8 **IT IS THEREFORE ORDERED** that plaintiff's application to proceed *in forma*
9 *pauperis* (docket #1) is **DENIED**.

10 **IT IS FURTHER ORDERED** that this action will be dismissed without prejudice unless
11 plaintiff pays the \$350.00 filing fee in full within **thirty (30) days** of entry of this order.

12 **IT IS FURTHER ORDERED** that the Clerk of Court shall send plaintiff two copies of
13 this order. Plaintiff shall make the necessary arrangements to have one copy of this order attached to
14 the check paying the filing fee.

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall retain the complaint.

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18 DATED this 16th day of February, 2011.

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21 UNITED STATES DISTRICT JUDGE
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